IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 17392 of 2007(U)

PETITIONER:

JEEN M.V., AGED 27 YEARS,
S/O. P.VINCENT, LPSA, ST.JOSEPH'S LPS,
CHOWARA, RESIDING AT CHRIST BHAVAN,
KOCHUPALLY, PULLUVILA P.O., 695 526.

BY ADV. SRI.R.SREERAJ

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
ITS SECRETARY, GOVERNMENT OF KERALA,
DEPARTMENT OF GENERAL EDUCATION,
THIRUVANANTHAPURAM.

2. THE ASSISTANT EDUCATIONAL OFFICER,
BALARAMAPURAM, THIRUVANANTHAPURAM.

3. THE MANAGER,
ST.JOSEPH'S LPS, CHOWARA.

BY GOVT. PLEADER SRI. A.J. VARGHESE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K. BASHEER, J.

W.P.(C). NO. 17392 OF 2007

Dated this the 18th day of June, 2007

J U D G M E N T

Petitioner claims that he has been working in an aided school under the management of respondent No.3 against a leave vacancy for nearly four years now, without salary and allowances. According to the petitioner, he was initially appointed in the school as a lower primary school assistant in a short leave vacancy with effect from August 21, 2001. He continued in service till October 31, 2001. Thereafter, he was appointed in another leave vacancy from October 21, 2003 till March 31, 2003.

2. Petitioner was again appointed in the school with effect from August 13, 2003 in another leave vacancy of Smt. Reena D'cruz who, the petitioner alleges, was a regular lower primary school assistant. Smt. Reena had availed of leave without allowance from April 1, 2003 for five years, which is due to expire on March 1, 2008. It is against the said leave vacancy the petitioner has been appointed, according to him. It is the case of the petitioner that initially he was appointed by the management in the above vacancy from August 13, 2003 till June 30, 2005. Later, on a request made by the petitioner himself, the tenure was extended up to March 1, 2008, the date when the leave without allowance of Smt. Reena D'cruz is to expire. It is on the basis of the above appointment that the petitioner is continuing in the school.

3. The grievance of the petitioner is that he is not being paid salary on the ground that the leave availed of by Smt. Reena D.cruz has not yet been sanctioned or approved by the Government. He contends that the Government is bound to pay him salary and allowances irrespective of the fact that leave availed of by Smt. Reena is sanctioned or not. I am afraid the contention raised by the petitioner is totally misconceived and untenable.

4. It is admitted by the petitioner himself that the competent authority has not sanctioned leave to Smt. Reena D'cruz so far. It is also conceded by the petitioner that he may be entitled to get his appointment approved only if leave is sanctioned to Smt. Reena D'cruz. But the contention of the petitioner is that since the manager has appointed him, the said appointment cannot be termed as illegal or irregular and therefore the Government is bound to pay him salary and allowances. In this context, petitioner invites my attention to two decisions of this Court, one of which is by a Division Bench in ***Manager, M.M. High & U.P. School v. Dy. Director of Edn. and Others*** [1993 (2) KLJ 1103]. I have carefully perused the above judgment. To a query as to how the above judgment comes to the rescue of the petitioner, it is submitted by the learned counsel that there is a statutory duty cast on the Manager to pay salary to the staff of his school as per the Rules and Orders that may be issued by the

Departmental authorities. Manager has a legal duty to make appointments in the school at the appropriate time. Indisputably, the Manager of a school is bound to discharge the statutory duty cast on him. But the obligation is only to perform those duty which are legally sanctioned. The manager cannot make any illegal or irregular appointment in the school. No statutory provision gives such a power to a manager. The Division Bench while dealing with Rule 3 Chapter III had observed thus in the above judgment:

> *"There is a statutory duty cast upon the Manager to provide the staff for the school as per the Rules and Orders that may be issued by the Departmental authorities."*

The above observation is the answer to the untenable contention raised by the petitioner.

5. Yet another decision which has been brought to my notice is ***Shobhana v. Manager, Cholapurath A.U.P.S.*** [1997 (2) KLJ 700]. Yet again, I am afraid the decision cited by the learned counsel will not come to his rescue. In this case the question which came up before this Court was in relation to Note 2 of Rule 51A and also Rule 7(4) of Chapter III KER. This Court held that the manager is duty bound to provide the staff required for the school and that the Government had taken upon itself the liability to pay the salary to the teachers. The court went on and observe that, it is the duty of the manager to fill up all the posts in accordance with the orders

of the educational authorities who fix the staff strength.

6. Petitioner has not been able to point out whether the manager in this case had failed to discharge any of the duties referred to in the two judgments. What the manager had done was that petitioner was appointed against a leave vacancy which was not sanctioned at all. The manager was not statutorily bound to fill up a vacancy which had not arisen in the school. It is pointed out by the learned counsel that Smt. Reena D'cruz is not likely to return. May be so. If the manager is of the view that Smt. Reena D'cruz has to be proceeded against, it will be open to him to take appropriate action against her. In this context, it is pertinent to note that Smt. Reena D'cruz had applied for leave without allowance for five years, which is due to expire only March 1, 2008. Undoubtedly, the petitioner will get salary the moment the leave is sanctioned to Smt. Reena if she is eligible to get it. Definitely Panchayat has to wait till that happens. Petitioner ought to have persuaded the manager and the appropriate authority to take an expeditious decision on the leave application of Smt. Reena. Petitioner has in fact moved in a wrong wrong direction. The contentions raised by him are totally misconceived.

The writ petition is dismissed.

A.K. BASHEER, JUDGE

vps

A.K. BASHEER, JUDGE

OP NO.20954/00

JUDGMENT

1ST MARCH, 2007